IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.
JUDGMENT.

Mahila Bal Kalyan Kendra Bhadra through its President vs. Bhagwan Dass

S.B. Civil Second Appeal No.54/1988 against the judgment and decree dated 31.8.87 passed by the learned Addl. District Judge, Nohar in Civil Appeal No.17/83.

Date of Judgment: May 11, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. S.G. Ojha, for the appellant.
Mr. Sudhir Sharma, for the respondent.

BY THE COURT:

Though the present second appeal was admitted on 19.7.1988 but without framing any substantial question of law. The learned counsel for the respondent submits that in fact no substantial question of law is involved in this second appeal because of the fact that the two courts below concurrently held that the plaintiff failed to prove the need for the shop in dispute.

The learned counsel for the appellant vehemently submitted that the suit has been filed by not a private party, therefore, there cannot arise any ill-motive or lack of bona fide of the plaintiff. It is submitted that the shop itself was constructed over a space over which the plaintiff intended to construct the stairs but because of the reasons mentioned in the plaint, the stairs were not constructed and the shop

was constructed for temporary period and it was let out to the defendant on 12.12.1973. The plaintiff is in need of the suit premises because the plaintiff wants to have stairs so that they may manage their property properly. In view of the above, the two courts below failed to appreciate the facts of the case properly.

I considered the facts of the case and perused the plaint allegations.

The plaintiff in his plaint stated that the space over which the shop has been constructed was in fact meant for constructing stairs but at that time, the plaintiff had no sufficient construction materials, therefore, they put roof over the said space and converted it into shop and let it out to the defendant. Now the plaintiff required the shop for constructing the stairs. The plaint allegations were controverted by the defendant by filing the written statement.

It came in the evidence of the plaintiff that the plaintiff has 12 shops and out of 12, for 11 shops, suit has been filed for eviction of the tenant. The plaintiff served notice upon defendant also on 19.12.1979 but the plaintiff did not sought eviction of the tenant on the ground as submitted in the suit filed by the plaintiff. The two courts below concurrently held that the plaintiff's own witnesses admitted that other space is available for construction of stairs which is in between shops no.4 and 5 and that space has been kept for stairs only. Apart from it,

the two courts below found that the stairs can be constructed in the back of the shops where the plaintiff's property is very much available. In totality of facts and circumstances, after appreciating the evidence of both the parties, the trial court found the need of the plaintiff as created one and in fact not in existence. The plaintiff's suit was dismissed by the trial court vide judgment and decree dated 17.11.1983 and above finding of fact has been upheld by the first appellate court.

No substantial question of law is involved in this appeal and the finding of fact recorded by the two courts below suffer from no error of fact or law. Hence there is no merit in this appeal and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.